

13 APPEARANCES:
14 For the Plaintiff: GORDON & REES, LLP
15 RICHARD SYBERT
16 SEAN FLAHERTY
17 AMANDA ABELN
18 101 West Broadway, Suite 2000
19 San Diego, CA 92101

20 For the Defendant: THE LAW OFFICE OF JACK FITZGERALD, PC
21 JACK FITZGERALD
22 TREVOR FLYNN
23 3636 Fourth Avenue, Suite 202
24 San Diego, CA 92103

25 PRICE PARKINSON & KERR PLLC
26 RONALD F. PRICE
27 5742 W. Harold Gatty Dr.
28 Salt Lake City, UT 84116

29
30 Reporter: Dana Peabody, RDR, CRR
31 District Court Clerk's Office
32 333 West Broadway, Suite 420
33 San Diego, California, 92101

1 San Diego, California, April 18, 2016

2 * * *

3 THE CLERK: Calling matter number 10, 15-CV-0595,
4 Obesity Research Institute, LLC, versus Fiber Research
02:29 5 International, LLC, et al., on calendar for a motion hearing.

6 THE COURT: Good afternoon. Counsel, state your
7 appearances for the record, please.

8 MR. SYBERT: Good afternoon, Your Honor. Richard
9 Sybert, Sean Flaherty and Amanda Abeln from Gordon & Rees for
02:29 10 the plaintiff and counter-defendant Obesity Research.

11 THE COURT: Good afternoon.

12 MR. FITZGERALD: Good afternoon, Your Honor. Jack
13 Fitzgerald for Fiber Research.

14 MR. FLYNN: Good afternoon, Your honor. Trevor Flynn
02:29 15 for Fiber Research.

16 MR. PRICE: Good afternoon, Your Honor. Ron Price for
17 Fiber Research.

18 THE COURT: Good afternoon.

19 This is set on the motion to set aside the default
02:29 20 filed by Obesity Research and the motion for the default
21 judgment filed on behalf of Fiber Research. I know there's a
22 lot of motions swirling around out there, but I thought you
23 needed an immediate decision on this particular motion, so I'm
24 only ruling on those motions at this point in time.

02:30 25 I can tell you I'm really disappointed in the quality

1 of lawyering in this case. I set this for oral argument
2 because I -- even though both sides seem to not mind wasting
3 their clients' money on motions and responses, I didn't,
4 frankly, want to waste my time in ruling on them.

02:30 5 When I hear lawyers bemoan the lack of civility in the
6 profession and talk about how it doesn't benefit clients in the
7 long run, they're talking about you. And I can tell you when I
8 read motions like the motions that were filed in this
9 particular case, I hear Charlie Brown's parents talking, "wah
02:30 10 wah wah wah wah." That's exactly what I read.

11 As a preliminary matter, Obesity's motion to seal a
12 document that's been on the public docket for almost a year --
13 that's electronic record number 156 -- is denied. Obesity
14 fails to show either a compelling reason or good cause for the
02:31 15 late motion to seal.

16 Fiber's motion to seal specific Exhibits 183, 162, and
17 168 and Obesity's motion to seal Exhibit 6, 195 are granted.

18 The exhibits lodged at electronic records 184, 163,
19 169, and 196 may all be filed under seal.

02:31 20 The motion to set aside the default is granted --
21 that's electronic record number 166 -- despite the fact,
22 Counsel for Obesity, that you rely heavily on *TCI Group Life*
23 *Insurance Plan versus Knoebber* without mentioning the fact that
24 that case has been overruled. Perhaps if you'd taken a little
02:31 25 bit less time on the attacks and a little bit more time on the

1 || Shepardizing, you wouldn't have made that error.

2 The motion for default judgment, which is electronic
3 record number 161, is denied.

Just for future guidance, when you file motions in my courtroom, what I want to know is what relief are you seeking, what legal authority are you relying on, and why do you think the legal authority entitles you to the relief you are seeking. I don't want to know how aggravating or unreasonable the other side is. Even if they're making allegations against you, take the high ground, and don't let the other side drag you into the mud.

18 So ordered. Thank you.

-----000-----

20

21

22

23

24

25

1 C-E-R-T-I-F-I-C-A-T-I-O-N

2

3 I certify that the foregoing is a correct transcript

4 from the record of proceedings in the above-entitled matter.

5

6 Dated April 26, 2016, at San Diego, California.

7

8 /s/ Dana Peabody

9

10 _____

11 Dana Peabody,
12 Registered Diplomate Reporter
13 Certified Realtime Reporter

14

15

16

17

18

19

20

21

22

23

24

25